



STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
OFFICE OF FAIR HEARINGS

FILED

Aug 30, 2024, 1:46 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 24-FH1576

Plan ID No.: [REDACTED]

vs.

DENTAQUEST OF FLORIDA, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on July 29, 2024, at 12:59 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Shonda Rushing
Complaints and Grievance Specialist
DentaQuest of Florida, Inc.

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for orthodontic treatment (braces) was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner’s Authorized Representative and [REDACTED], [REDACTED] (“[REDACTED]”), appeared for the Fair Hearing to provide testimony on behalf of the Petitioner.

Shonda Rushing (“Ms. Rushing”), Complaints and Grievance Specialist for DentaQuest of Florida, Inc. (“DentaQuest”) appeared for the Fair Hearing on behalf of Respondent. Dr. Daniel Dorrego (“Dr. Dorrego”), Senior Dental Consultant for DentaQuest, appeared for the Fair Hearing as a witness for Respondent.

Lee Ann Williams, Medical Health Care Program Analyst and Fair Liaison for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for the Fair Hearing as an observer. Bob Arnold, Hearing Officer for AHCA, appeared for the Fair Hearing as an observer.

Petitioner did not introduce any exhibits at the hearing.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a fifty-five (55)-page evidence packet. The evidence packet appears in the Office of Fair Hearings document management system as file titles “SFH Packet 24-FH1576 [PETITIONER] Part 1.pdf”, “SFH Packet 24-FH1576 Part 2.pdf”, and “SFH Packet 24-FH1576 [PETITIONER] PART 3.pdf.” Absent an objection from the Petitioner, the undersigned admitted the fifty-five (55)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

FINDINGS OF FACT

1. Petitioner is an enrolled member of DentaQuest. See page 10 of RCE 1. DentaQuest is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is [REDACTED]. *Id.*

3. Petitioner requested orthodontic treatment services (braces), specifically, one (1) unit of code D8070, eighteen (18) units of code D8670, and one (1) unit of code D8680. *Id.* Petitioner’s provider completed an ADA Dental Claim Form requesting the services, accompanied by pictures of the Petitioner, an x-ray, and an Orthodontic Criteria Index Form (“Index Form”)¹. *Id.* at 10-11 and 22-29. Petitioner’s provider marked “No” for each of the criteria listed on the Index Form. *Id.* at 26.

4. In a Notice of Adverse Benefit Determination (“NABD”), dated April 26, 2024, Respondent denied Petitioner’s request. *Id.* at 13-16. The NABD explained the basis of the denial as follows:

- ✓ We determined that your requested services are **not medically necessary** because the services do not meet the reason(s) checked below: (See Rule 59G-1.010)
- ✓ Must be needed to protect life, prevent significant illness or disability, or alleviate severe pain.
- ✓ Must be individualized, specific, consistent with symptoms or diagnosis of illness or injury and not be in excess of the patient’s needs.

...

The facts that we used to make our decision are:

Our dentist looked at the information sent by your dentist. You did not meet the criteria needed to approve braces. The information sent shows a lack of medical necessity or a handicapping malocclusion. The criteria measure how your teeth are different from normal alignment. It also measures how your teeth are different from normal contact between the teeth when you chew or bite down. The criteria reviewed includes: a deep impinging overbite (this is when your upper teeth come too far down over your lower teeth and the lower teeth cause gum damage to the roof of your mouth); open-bite with your front teeth (this is when there is a space between the biting surface of the front teeth when the back teeth bite together); cross-bite with your front teeth (this is when the front teeth don't line up with the bottom teeth); impacted front teeth (this is when your teeth will not grow in to your mouth without help); over-jet bigger than 9mm or negative

¹ The provider included the attachments to the submitted ADA Claim Form under title “[REDACTED] See attached photo, 202411651333000_1.pdf, 202411651333000_2.jpg, 202411651333000_3.jpg, 202411651333000_4.jpg, 202411651333000_5.jpg, 202411651333000_6.jpg, 202411651333000_7.jpg, 202411651333000_8.jpg, 202411651333000_9.jpg.”

over-jet bigger than 3.5mm (this is when your top teeth or bottom teeth are too far forward and do not line up correctly); cleft lip; cleft palate (this is an opening in the roof of your mouth); or issues with your teeth that would need braces and surgery in order to fix them. We have also told your dentist. Please talk to your dentist about your treatment choices.

This denial applies to this service(s):

- D8070 braces

We based this decision on:

- DentaQuest Clinical Criteria for Comprehensive Orthodontics

- D8670 braces

We based this decision on:

- DentaQuest Clinical Criteria for Comprehensive Orthodontics

- D8680 braces

We based this decision on:

- DentaQuest Clinical Criteria for Comprehensive Orthodontics

Id. at 13-14.

5. Petitioner requested a plan appeal and received Notice of Plan Appeal (“NPAR”), dated June 4, 2024, upholding the denial. *Id.* at 35-37. The NPAR explained as follows:

We made this decision based on all the information we got during the appeal process. This is a summary of our investigation and our decision about your appeal:

Our dentist looked at the information your dentist sent. You did not meet the needs to get braces. The information shows your teeth are not different enough from normal or that you do not have a bad problem with how your teeth fit together. The rules measure how your teeth are different from teeth that fit together right. It also measures how your teeth touch each other when you chew or bite down. The rules looked at: If your top teeth come down too far over your bottom teeth and hurt the top of your mouth. If there is a space between your front teeth when you bite with your back teeth. If your front teeth do not line up right with your bottom teeth. If your teeth will not grow into your mouth without help. If your top or bottom teeth stick out too far and do not line up right. If you have a split lip. If you have a split roof of your mouth. If your teeth need braces and surgery to fix them. We based this decision on: DentaQuest Clinical Criteria for Comprehensive Orthodontics.

Id. at 35.

6. On May 13, 2024, Petitioner requested a Fair Hearing regarding the denial of dental services. On July 11, 2024, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for July 29, 2024, at 1:00 p.m. EST.

7. [REDACTED] testified that Petitioner's dentist recommended braces to correct Petitioner's [REDACTED]. [REDACTED] argued that Petitioner qualifies to receive braces based on the submitted x-ray. See ¶ 3.

8. Dr. Dorrego testified to the following:

- a. DentaQuest is third-party administrator and follows the state Medicaid guidelines.
- b. The Orthodontic criteria index form establishes the criteria to cover orthodontic treatment. See RCE 1 at 50-51.
- c. To approve orthodontic service, a member must meet at least one (1) of the eight (8) criteria. *Id.*
- d. Based on the dental guidelines, criteria, and documentation submitted, DentaQuest reviewers did not find any qualifying conditions for comprehensive orthodontic service at this time. See RCE 1 at 47 and ¶¶ 3 and 9.

9. Exhibit B Benefits Covered for FL Statewide Medicaid Dental Health Program – Children Medicaid & MediKids Medicaid (“Exhibit B”), found on pages 52-55 of RCE 1, show the dental services covered under Florida Medicaid:

2) Comprehensive orthodontic treatment which is the coordinated diagnosis and treatment leading to the improvement of a patient's craniofacial dysfunction or dentofacial deformity including anatomical and functional relationships. Comprehensive orthodontic treatment utilizes fixed orthodontic appliances through procedure codes D8070, D8080 or D8090 in conjunction with the appropriate stage of dentition development. Comprehensive orthodontics (codes D8070, D8080, or D8090) may be reimbursed once in the lifetime of the recipient. Initial payments for comprehensive orthodontics do not include related extractions or oral or

orthognathic surgery. These services must be billed separately. The overall fee for orthodontic appliances procedure codes (D8070, D8080, or D8090) includes the removal of the appliances and retainers at the end of treatment. The fixed appliance reimbursement at the start of treatment covers the cost of appliances and materials throughout treatment, including the removal of appliances and fabrication of retainers upon completion of treatment. Once DentaQuest receives the banding date the initial payment for code D8070, D8080, or D8090) will be set to pay out.

3) Periodic orthodontic treatment visits code D8670. DentaQuest will reimburse monthly maintenance visits a maximum of 24 units or 36 months whichever comes first. Extensions beyond 24 units are granted only in the most severe cases such as cleft or orthognathic surgical cases). Providers must submit claims for periodic treatment visits (Code D8670). The member must be eligible on the date of the visit. The provider may pass on the costs of broken brackets or bands to the recipient when breakage exceeds a quantity of five. The Member must be eligible with their Health Plan in order for payments to be made. Whenever the Member becomes ineligible, the Member is responsible for payment during that time period.

Id. at 52.

CONCLUSIONS OF LAW

10. The Agency’s Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to section 409.285(2), Florida Statutes (2022). This order is the final administrative decision of AHCA under section 409.285(2)(a).

11. This hearing was held as a *de novo* proceeding pursuant to Rule 59G-1.100(17)(b), Florida Administrative Code Rule (“Fla. Admin. Code R.”).

12. Because Petitioner is requesting a new service, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to Petitioner. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by “the greater weight of the evidence” (Black’s Law Dictionary at 1201, 7th Ed.).

13. Petitioner’s requests for dental services are governed by the Florida Medicaid Dental Coverage Policy (August 2018) (“Dental Policy”), which is incorporated by reference in Fla. Admin. Code R. 59G-4.060. The Dental Policy provides the following:

1.0 Introduction

Florida Medicaid provides dental services for the study, screening, assessment, diagnosis, prevention, and treatment of diseases, disorders, and conditions of the oral cavity.

...

1.4.4 Handicapping Malocclusion

A condition that results in a disability or impairment to the recipient's physical development.

...

4.1 General Criteria

Florida Medicaid reimburses for services that meet all of the following:

- Are determined to be medically necessary
- Do not duplicate another service
- Meet the criteria as specified in this policy

...

4.2.4 Orthodontic Services

Florida Medicaid covers orthodontic services for recipients under the age of 21 years with handicapping malocclusions as follows:

- Up to 24 units within a 36 month period, including the removal of the appliances and retainers at the end of treatment
- One replacement retainer(s) per arch, per lifetime

...

4.3 Early and Periodic Screening, Diagnosis, and Treatment

As required by federal law, Florida Medicaid provides services to eligible recipients under the age of 21 years, if such services are medically necessary to correct or ameliorate a defect, a condition, or a physical or mental illness. Included are diagnostic services, treatment, equipment, supplies, and other measures described in section 1905(a) of the SSA, codified in Title 42 of the United States Code 1396d(a). As such, services for recipients under the age of 21 years exceeding the coverage described within this policy or the associated fee schedule may be approved, if medically necessary. For more information, please refer to Florida Medicaid's Authorization Requirements Policy.

Dental Policy at pages 1-4.

14. The Dental Policy also establishes dental services specifically not covered under Florida

Medicaid:

5.1 General Non-Covered Criteria

Services related to this policy are not covered when any of the following apply:

- The service does not meet the medical necessity criteria listed in section 1.0
- The recipient does not meet the eligibility requirements listed in section 2.0
- The service unnecessarily duplicates another provider's service

5.2 Specified Non-Covered Criteria

Florida Medicaid does not cover the following as part of this service benefit:

- Anesthesia for restorative services, when billed separately
- Dental screening and assessment performed by an RDH on the same date of service as an evaluation performed by a dentist
- Fixed partial dentures for recipients 21 years and older
- Full mouth scaling performed on the same date of service as root planning or periodontal scaling
- Individual periapical radiographs(s) on the same date of service when the reimbursement amount exceeds that of a complete series
- Intraoral-completes series and a panoramic film on the same date of service

Dental Policy at page 5.

15. Because Petitioner is under the age of 21 years, the requirements of Early and Periodic Screening, Diagnostic, and Treatment (“EPSDT”) apply to her request for services. According to 42 U.S.C. § 1396d(r)(5), EPSDT services mean, in relevant part, the following:

(3) Dental Services

(A) which are provided –

- (i) at intervals which meet reasonable standards of dental practice, as determined by the State after consultation with recognized dental organizations involved in child health care, and
- (ii) at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition; and

(B) which shall at a minimum include relief of pain and infections, restoration of teeth, and maintenance of dental health.

Further, according to 42 U.S.C. § 1396d(r)(5), EPSDT include, the following items and services:

Such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate defects and physical and mental illness and conditions discovered by the screen services, whether or not such services are covered under the state plan.

16. The Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”), incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “Medically Necessary” or “Medical Necessity” as follows:

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

The fact that a provider has prescribed, recommended or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

Definitions Policy at page 7.

17. In the instant case, Petitioner is under 21 years of age and requested orthodontic treatment (braces). *See* ¶ 2-3. In a NABD, dated April 26, 2024, Respondent denied Petitioner's request citing the lack of medical necessity. *See* ¶ 4. Specifically, Respondent explained that the treatment is not "necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain" and not "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs." *See* ¶ 4-5. In the NPAR dated June 4, 2024, Respondent upheld their denial. *See* ¶ 5. Petitioner has the burden of proof to show by a preponderance of evidence that the Respondent's determination was incorrect. *See* ¶ 12.

18. Petitioner's dentist recommended braces to correct Petitioner's [REDACTED]. *See* ¶¶ 3, 7. Exhibit B maintains that comprehensive orthodontic treatment utilizes fixed orthodontic

appliances through procedure codes D8070, D8080 or D8090 in conjunction with the appropriate stage of dentition development. See ¶ 8-9. According to Dr. Dorrego's testimony, to approve orthodontic service, a member must meet at least one (1) of the eight (8) criteria on the Index Form. See ¶ 8. Petitioner's provider marked "No" for each of the criteria listed on the Index Form. See ¶¶ 3, 8. Dr. Dorrego testified that DentaQuest reviewers also did not find any qualifying conditions for comprehensive orthodontic service. See ¶¶ 4-5, 8. Accordingly, no qualifying dentition development is evidenced in the record to approve the braces or are otherwise "not in excess of the patient's needs." See ¶ 3, 7-9, 13-16.

19. As Petitioner did not show that the orthodontic services were warranted, accordingly, the corresponding monthly visits requested are not medically necessary. See ¶ 3.

20. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that the requested services are medically necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner has not shown that the requested services are necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, the undersigned finds that Petitioner has not proved by a preponderance of the evidence that Respondent's denial of orthodontic treatment (braces) was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED:

Respondent's denial of orthodontic treatment (braces) is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

DONE AND ORDERED this 30th day of August, 2024 in Tallahassee, Leon County, Florida.



Kimberly Roche
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KIMBERLY ROCHE, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407

NOTICE OF A RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

COPIES FURNISHED TO:



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